IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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FAO No. 2071 of 2005.
Date of Decision: August 21, 2007.

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Mangal Singh son of Gurnam Singh, resident of Village Rame, Tehsil Shahkot, District Jalandhar.

Versus

1. Additional Deputy Commissioner, Jalandhar, exercising the powers of Presiding Officer, Election Tribunal, Jalandhar;

2. Jagtar Singh son of Jeet Singh resident of Village Rame, Tehsil Shahkot, District Jalandhar.

Respondents.

3. Jasbir Singh son of Malkit Singh;

4. Balbir Kaur wife of Mohinder Singh;

5. Jarnail Singh son of Fajla, respondents No. 3 to 5l residents of village Rame, Tehsil Shahkot, District Jalandhar.

6. Shri Hoshiar Singh, Deputy DEO (S), Jalandhar; and

7. Presiding Officer of Village Rame through Election Officer, Jalandhar.

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Before: Hon'ble Mr. Justice R.S.Madan.

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Present: Shri Joginder Nagpal, Advocate, for the appellant.

Shri M.S.Dhillon, Advocate, for respondent No.1.

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R.S.Madan, J (Oral)

Challenge here in this appeal is the order dated March 18, 2005 passed by Additional Deputy Commissioner, Jalandhar (exercising the powers of Presiding Officer, Election Tribunal, Jalandhar, under the Punjab State Election Commission Act, 1994 (herein after to be referred to as the “Act”)..

2. Jagtar Singh petitioner filed the election petition under Sections 75

and 76 of the Act, against the present appellant on the broad averments that election for the post of Sarpanch was held on June 29, 2003 wherein Mangal Singh son of Gurnam Singh, was declared as Sarpanch of Village Rame, against the post reserved for Scheduled Caste Category, whereas, as per contention of the petitioner said Mangal Singh does not belong to Scheduled Caste Category. The election of Mangal Singh, as Sarpanch of Village Rame was as a result of fraud and void abnitio. It is alleged that the petitioner who belonged to Schedule Caste Category, secured 265 votes whereas the Mangal Singh appellant herein secured 290 votes.

In the petition, the petitioner filed written statement pleading that Mangal Singh belong to Rai Sikh community, which has been declared as Backward Class by the Punjab Government. The petition was contested by respondent No.1 only. The respondent No.1 has placed on the record certificate issued by the Tehsildar, Shahkot showing that he being Sirkiband belong to Schedule Caste Category. He further pleaded that even if he is Rai Sikh by caste, the Government of Punjab, Department of Welfare vide its letter dated September 30, 2003 under the signatures of Special Secretary has clarified that Rai Sikh community of Punjab like Sirkiband are to be treated as Scheduled Caste Category. Respondent No.5 in his reply has produced a photocopy of Scheduled Caste Certificate allegedly issued by the Tehsildar, Shahkot, dated 24.7.1996 which shows Mangal Singh, Sarpanch as Sikriband belonging to Scheduled Caste Category.

In the replication all the pleas taken in the written statement were controverted.

From the pleadings of the parties, the learned trial court framed the following issues for determination:-

1. Whether the respondent No.1 has been wrongly elected against Scheduled Caste reserve category, if

so whether his election is liable to be set aside on this ground only? OPP.

2. Whether respondent No.5 has erred in declaring respondent No.1 as elected Sarpanch? OPP.

3. Whether the petitioner is not entitled to be declared as Sarpanch? OPD.

4. Relief.

In order to prove its case, the petitioner has produced on the record the certified issued by the Lambardar of Village Rame, which shows that Mangal Singh son of Gurnam, Singh, resident of Village Rame belongs to Rai Sikh community by birth, which has been declared as Backward Class by the Punjab Government. List of Scheduled Caste and Backward class categories maintained by the office of Tehsildar, Shahkot were produced by Surinder Kumar, Clerk. In his statement dated March 03, 2005, he has categorically stated that as per the said list Annexure P-1, Rai Sikh community has been included in the Backward Class category. He has placed on the record photocopy Ex.P-1. He further placed on the record photo copies of Certificates No. 369/SC and 370/SC dated January 28, 2003 issued in favour of Shindo and Pooro who belong to Rai Sikh Community.

On the other hand, the respondent has placed reliance on the Certificate Annexure A-1 issued by the Tehsildar, Shahkot dated 24.07.1996, the contents of which are reproduced as under:-

SCHEDULED CASTE CERTIFICATE.

No. 189 Dated 24.07.1996.

This Certificate is issued to Shri Mangal Singh son of Shri Gurnam Singh, resident of Village Rame, P.O. Bahmanian, Tehsil Shahkot, District Jalandhar verified by the Naib Tehsildar as verified by the report of Patwari and Kanungo vide his report No.....dated 11.04.1996.

That he belongs to Sirkiband Caste which is recognized as Scheduled Caste / Tribe under the constitution (Scheduled Caste) Order 1950.

Dated 24.7.1996. Sd/-
Tehsildar, Shahkot.

No evidence was produced by the respondent. On careful analysis of the documents and the evidence brought on the record, it is evidence that the appellant himself has set up the alternative plea by alleging in the written statement that even if he is a Rai Sikh, he belongs to Sirkiband community.

The learned Tribunal after hearing the learned counsel for the parties and going through the record brought on the record, returned finding on issue No.1 by observing that the letter issued by the Additional Secretary, Social Welfare dated 30.09.2003 which is subsequent in time when the election took place on 29.06.2005, the respondent cannot take the benefit of this letter at all that too retrospectively and thus set aside the election of the appellant holding that he had been wrongly elected as Sarpanch of the Village under reserved category (Scheduled Caste).

No evidence was led on issue No.3 by either party. Hence, this issue was decided in favour of the respondent and against the appellant.

As a cumulative effect of the decision on various issues, the election of the appellant as Sarpanch, under Scheduled Caste category was set aside and consequently, the respondent was declared as elected Sarpanch of Village Rame.

I have heard Shri R.S.Bajaj, Advocate, for the appellant and Shri M.S.Dhillon, Advocate, for respondent No.1..

On behalf of the appellant it is contended by Shri R.S.Bajaj, Advocate, that the Election Tribunal has not taken into consideration the Scheduled Caste Certificate Annexure P-1 issued by the Tehsildar. This

certificate was issued on the report furnished by the Patwari and Kanungo of the Village on 24.07.1996 wherein it is shown that the appellant belongs to Sirkiband Caste which is recognized as Scheduled Caste / Tribe under the Constitution (Scheduled Caste) order, 1950. Even if no witness was produced by the appellant to prove the alleged certificate, it is admissible in evidence under Section 35 of the Evidence Act.

On the other hand, learned counsel contended that by way of alternative plea the appellant in the written statement has admitted that even if he belongs to Rai Sikh community which falls in B-class category, the letter dated September 30, 2003 issued by the Government of Punjab, Department of Welfare, under the signatures of Special Secretary has clarified that Rai Sikh community of Punjab like Sirkiband are to be treated as Scheduled Caste category, is sufficient to prove the factum. However, this letter does not show that it was issued with retrospective effect. Therefore, the alternative plea of the appellant that he belongs to Rai Sikh category which was earlier in the B.C. Category, vide letter under reference this has been converted into Scheduled Caste Category.

It was submitted by the learned counsel for the respondent that photo-stat copies of the Annexures P-2 and P-3 show that Rai Sikh community falls under the Backward Class category.

Taking into consideration, the submissions of the learned counsel for the parties, this court is of the view that the photo-stat copy of the Certificate Annexure P-1 does not dispense with the formal proof even if the same is a public document. It is the case where the election of the petitioner has been challenged on the ground that he does not belong to the Scheduled Caste category. Therefore, it was incumbent upon the petitioner to have summoned the Tehsildar, Lambardar or the Kanungo on whose report this Certificate was issued and the sources from where they came to the conclusion that Mangal Singh belonged to the Scheduled

Caste Category, was to be proved. Thus in the absence of any evidence on the record and by taking alternative plea of belonging to Rai Sikh community, the petitioner himself has failed to prove that he belong to Scheduled Caste Category and has a right to contest for the office of Sarpanch under the reserved category.

So far as the letter dated September 30, 2003 issued by the Special Secretary to the Government of Punjab is concerned, the same was issued after the three months of the elections, which were held on June 29, 2003. Even this letter does not help the petitioner in any way. In so far as the Photostat copies of Exs. P-2 and P-3, are concerned, Rai Sikh community falls under the Backward Class Category on the date of election, which was lateron included in the list of Scheduled Caste Category.

Taking into consideration the facts and circumstances appearing in this case, there is no force in this appeal and the same is hereby dismissed.

(R.S.Madan)
Judge

August 21, 2007.
Malik